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[New Hampshire Code of Administrative Rules](#)
[Env-Ws 394](#)

Part Env-Ws 394 WATER SUPPLY LAND GRANT PROGRAM

Statutory Authority: RSA 486-A

Env-Ws 394.01 Purpose. The purpose of these rules is to establish procedures and standards for the application and award of grants to purchase land or conservation easements for land within the source water protection areas of active or proposed sources of public water supply for community or non-community, non-transient water systems to ensure the permanent protection of these critical drinking water resources.

Env-Ws 394.02 Definitions.

- (a) “Active” means, being subject to RSA 485 the NH Safe Drinking Water Act.
- (b) “Applicant” means an entity who is applying for a water supply land grant under this program.
- (c) “Community water system” means “community water system” as defined in RSA 485:1-a, I, namely “a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.”
- (d) “Conservation easement” means a perpetual conservation restriction as defined in RSA 477:45, I.
- (e) “Department” means the department of environmental services.
- (f) “Known contamination source” means a site(s) where contamination is known to exist as identified in the department’s geographic information system.
- (g) “Municipality” means a city, town, village district or precinct.
- (h) “Non-transient non-community water system” means “non-transient non-community water system” as defined in RSA 485:1-a, XI, namely “a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year.”
- (i) “Potential contamination source” means “human activities or operations that pose a risk that regulated contaminants might be introduced into the environment in such quantities as to degrade the natural groundwater quality. The term includes those land uses listed in RSA 485-C:7, II.”
- (j) “Proposed source” means sites in the department’s geographic information system ground water hazard data layer.

(k) “Sanitary radius” means an area in the immediate vicinity of the well that is under legal control of water supplier and is maintained in a natural state so as to minimize the risk of groundwater contamination.

(l) “Source” means groundwater or surface water which contributes water to a well or surface water intake.

(m) “Source water protection area” means “source water protection area” as defined in RSA 486-A:2, namely “the area around a source of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source.”

(n) “Undeveloped” means forest, farm, or other land that has not been substantially altered from its natural state and contains no structures or alterations which would jeopardize water quality.

Env-Ws 394.03 Process for Obtaining Water Supply Land Grants. To obtain a water supply land grant the applicant shall follow the process described here:

- (a) Complete a project eligibility application in accordance with Env-Ws 394.07;
- (b) Submit the project eligibility application to the department in accordance with the eligibility cycles specified in Env-Ws 394.04;
- (c) Receive an eligibility determination from the department in accordance with Env-Ws 394.08;
- (d) If the project is eligible having completed (a) through (c) above or having chosen to forego (c) and to instead submit the eligibility and grant application at the same time the applicant shall:
 - (1) Complete a grant application in accordance with Env-Ws 394.10, which includes documentation of at least a 75% match with the criteria specified in Env-Ws 394.06; and
 - (2) Submit the grant application to the department in accordance with the application cycles specified in Env-Ws 394.09;
- (e) Receive notification from the department of project selection in accordance with Env-Ws 394.11;
- (f) If a project is selected for a grant, submit the following to the department prior to the grant being awarded:

- (1) An environmental site assessment, if required, prepared in accordance with Env-Ws 394.12;
- (2) A property survey prepared in accordance with Env-Ws 394.13;
- (3) An appraisal prepared in accordance with Env-Ws 394.14;
- (4) A title examination and, if necessary, an opinion of title prepared in accordance with Env-Ws 394.15; and
- (5) Baseline documentation in accordance with Env-Ws 394.18.

(g) If the grant is awarded:

- (1) Execute the land transaction in accordance with Env-Ws 394.19;
- (2) Record the deed and survey, if applicable, in accordance with Env-Ws 394.19;
- (3) Adhere to grant contract conditions; and
- (4) Provide ongoing stewardship of the property in accordance with Env-Ws 394.18.

Env-Ws 394.04 Eligibility Cycles.

(a) For the initial grant cycle, an applicant shall complete a project eligibility application in accordance with Env-Ws 394.07 and submit it to the department on or before November 1.

(b) The applicant shall submit project eligibility applications prepared in accordance with Env-Ws 394.07 to the department on or before April 1 and October 1, each year that grant funds are available, to be considered in the semi-annual eligibility review periods beginning on those dates.

(c) The applicant may submit the grant application at the same time as the project eligibility application.

Env-Ws 394.05 Eligibility Criteria. A project shall be eligible to apply for a grant when all of the following conditions are met:

(a) The applicant is a New Hampshire non-profit, 501(c)(3) organization having water supply as a principal mission or a municipality;

(b) The land or conservation easement to be acquired, and any donation of interest in land to be used as match, is in the source water protection area(s) for an active or proposed source(s) of public drinking water for a community or non-transient non-community water system except for any small portions of land which extend beyond the source water protection area boundary which would be impractical to subdivide off;

(c) The land or conservation easement area to be acquired, and any donation of interest in land, that is being obtained for the protection of a surface water supply is within 5 miles of the intake on a river or in the case of reservoirs or lakes, 5 miles from the source being protected;

(d) The applicant's share of the project value or "match" meets the criteria specified in Env-Ws 394.06;

(e) The land or conservation easement area to be acquired, and any donation of interest in land to be used as match, is undeveloped land and free of known and potential contamination sources that are known to the applicant or identified in the department's geographic information system;

(f) The project eligibility application is approved by the local governing body, as defined in RSA 672:6, of the municipality applying for the grant, where the grantee is a municipality;

(g) The land or interest in land to be protected and any match land, is not already permanently protected and it is not currently owned by the applicant; and

(h) The land or interest in land to be protected will be held by a municipality.

Env-Ws 394.06 Match Criteria.

(a) The match shall equal at least 75% of the eligible water supply land protection costs which include the cost for the land or conservation easement and associated legal and transaction costs associated with the protection of the land or match properties.

(b) The match shall consist of one or more of the following:

(1) A municipal, state, or federal appropriation or other funds;

(2) A private cash donation;

(3) A donation, or partial donation, of an interest in land in one or more existing or proposed source water protection areas, providing the following conditions are met:

a. The land or conservation easement shall be held by a municipality;

b. The transaction to acquire the interest in land shall be completed prior to or simultaneously with the completion of the transaction for the property that is being acquired with grant funds;

c. The land, or interest in land to be donated, shall be located within the same source water protection area as that for the property being protected with grant funds or a protection area for another source serving the same grantee; and

d. The match value for the donated land or interest in land shall be established by an appraisal in accordance with Env–Ws 394. 15; and

(4) Expenses necessary to complete the transaction, including land transaction consultant, survey, appraisal, title examination, environmental assessment, stewardship baseline documentation, and attorney fees.

Env-Ws 394.07 Project Eligibility Application.

(a) The applicant shall submit the project eligibility application on forms supplied by the department.

(b) The project eligibility application shall include the following information:

(1) The name, address, and phone number of the applicant;

(2) The name, address, and phone number of the contact person;

(3) The US Environmental Protection Agency public water system identification number(s) for the source(s) of public drinking water that will be protected or if it is a proposed source, the public water system's identification number;

(4) The location of the parcel(s), including tax map, lot number, and deed reference, including book and page;

(5) A sketch of the properties on a topographic map;

(6) A description of the property and any donated interest in land to be used as match that shall include:

a. Structures;

b. Impoundments;

c. Disturbances; and

- d. Known or potential contamination sources identified by the department's geographic information system;
- (7) The total acreage of the parcel(s) and the area proposed for protection;
- (8) A description of how each of the eligibility criteria contained in Env-Ws 394.05 has been met;
- (9) A description of conservation values and uniqueness of the properties;
- (10) A signed and dated statement(s) from the landowner(s) stating the willingness to negotiate the acquisition of the properties;
- (11) The dated signature of the applicant or the applicant's authorized representative;
- (12) A description of the match authorized, received, or anticipated;
- (13) The value of the match, including the estimated assessed value of any interest in land that will be used as match;
- (14) The amount of funding sought from the department to acquire the property;
- (15) The type of transaction anticipated, either fee simple or easement;
- (16) The type of applicant, either a municipality or a section 501(c)(3) non-profit having a water supply principal mission; and
- (17) The identity of the owner of the land or easement that is acquired.

Env-Ws 394.08 Eligibility Determination

- (a) The department shall determine whether a proposed grant project is eligible to warrant review of a grant application based upon fulfilling the eligibility requirements specified in Env-Ws 394.05.
- (b) The department shall provide the applicant with a written determination of the applicant's eligibility within 30 calendar days of the eligibility cycle submission deadline.
- (c) If the eligibility requirements specified in Env-Ws 394.05 are not met, the applicant may revise the eligibility application and resubmit it in a subsequent eligibility cycle.

Env-Ws 394.09 Grant Application Cycles and Review.

(a) For the initial grant cycle, an applicant may submit a grant application on or before January 1.

(b) An applicant may submit a grant application to the department on or before June 1 and December 1 to be considered in the in the semi-yearly review period beginning on those dates.

(c) An applicant may submit the grant application when submitting the project eligibility application.

(d) Only grant applications for projects which the department has determined are eligible using the criteria contained in Env-Ws 394.05 shall be considered for grant funding.

Env-Ws 394.10 Grant Application Requirements.

(a) Grant applications shall be made on forms supplied by the department.

(b) Applicants shall supply the following information:

- (1) The name, address, and phone number of the applicant;
- (2) The name, address, and phone number of the contact person;
- (3) The name, address, and phone number of the property owner(s);
- (4) Instructions on how to gain access to the property to inspect it;
- (5) The dated signature of the applicant or the applicant's authorized representative;
- (6) The dated signature(s) of all title holders;
- (7) The US Environmental Protection Agency public water system identification number(s) for the source(s) of public drinking water that will be protected or the public water system identification number if it is a proposed source;
- (8) The location of the parcel(s), including tax map, lot number, and deed reference, including book and page;
- (9) The total acreage of the area proposed for protection including:
 - a. Acreage of land being protected, excluding any match lands;

- b. Acreage of land or interest in land being proposed as match;
- c. Acreage of each separate ownership;

(10) The following percentages:

- a. Percent of source water protection area that would be protected by the application;
- b. Percent of source water protection area currently protected;
- c. Percent of sanitary radius that would be protected by this application; and
- d. Percent of sanitary radius currently protected;

(11) A description of land use(s) within the source water protection area;

(12) A description of proposed land use for the property and any donated interest in land to be used as match;

(13) A description of conservation values for the property and any donated interest in land to be used as match, including:

- a. Watershed, floodplain, wetland, and water-quality protection value;
- b. Public recreational uses, accessibility, and potential;
- c. Significant scenic value;
- d. Historic, cultural or archaeological value;
- e. Geologic value;
- f. Rare species value or “exemplary natural communities”, value as identified and contained in the New Hampshire Natural Heritage Inventory’s Geographic Information System data layer;
- g. Length of undeveloped shoreline on pond, lake, stream, or navigable river;
- h. Wildlife value and management potential;
- i. Forestry value, management status, and acres of productive soils;

j. Agricultural value including acres of soils with prime or statewide significant designation; and

k. Any other identified conservation value; and

(14) A description of the match authorized, received, or anticipated.

(c) The applicant shall submit the following information with the application:

(1) A United States Geological Survey (USGS) topographic map which identifies the following areas within the applicable source water protection area(s):

a. The property to be acquired with the grant;

b. Any interest in land to be used as match;

c. Any property owned or otherwise protected by the applicant; and

d. Any other protected lands;

(2) A map, at a scale which ensures that all details are legible, which identifies all developed and undeveloped parcels within the applicable source water protection area(s);

(3) A map of the property and a map of any donated interest in land to be used as match, at a scale which ensures that all details are legible, which identifies the following:

a. Any structures;

b. All utilities and wells;

c. All roads or trails;

d. All easements or rights-of-way;

e. The approximate areas of field, forest, wetlands, and surface waters;
and

f. Gravel pits or disturbed areas;

(4) A copy of a source water or wellhead protection plan, if available;

(5) A plan and a schedule for owning or controlling the entire sanitary radius area within 3 years if it is not currently protected and will not be protected as a result of obtaining the grant;

(6) Financial information including the following:

- a. Current use taxation status of the property and any donation of interest in land being used as match;
- b. Current assessed valuation of the property and any donation of interest in land being used as match;
- c. An estimated fair market value or ad valorem price for the property and any donation of interest in land being used as match;
- d. The price at which the landowner will sell the property;
- e. The estimated expense(s) being used as a match;

(7) A signed and dated statement by the landowner(s) that:

- a. Agrees not to sell or commit to sell the property covered by the application except to the applicant for 120 days; and
- b. Agrees to permit inspection, survey, and appraisal thereof within 120 days from the date of receipt of a copy of the application by the department;
- c. Specifies all liens and encumbrances on the property;

(8) A signed and dated statement that the applicant will comply with the conditions specified in RSA 486-A:7 II (a) through (e); and

(9) A stewardship program plan which addresses requirements contained in Env-Ws 394.17 for the property and any donated interest in land to be used for match.

(d) The price at which the landowner will sell the property and the statement of liens and encumbrances that is submitted in the application, in accordance with Env-Ws 394.10 (c) (6) and Env-Ws 394.10 (7) c, respectively, shall be:

- 1. Treated as confidential under the provisions of RSA 91-A:5, IV; and

2. Subject to disclosure only with the consent of the applicant until the department has selected the application for grant funding;

Env-Ws 394.11 Application Ranking and Selection.

(a) The department shall rank each project within 60 days of the deadline for a grant application cycle.

(b) The ranking shall be based on a review of the application and a site walk conducted by the department.

(c) The department shall select the highest ranked projects for each grant application cycle until all available funding for that cycle is depleted.

(d) No project shall receive greater than 30% of the available funding for the grant application cycle.

(e) Projects not selected for funding shall be reconsidered in future grant application cycles providing the applicant notifies the department that the grant application is to be reconsidered and any date sensitive aspects of the application are updated.

(f) Projects shall be ranked sequentially such that the project with the highest number of total points shall receive funding first, subject to (c) above.

(g) Points shall be assigned to projects based on the following numerical system:

(1) Values assigned according to the type of water system shall be:

- a. For non-transient non-community systems, 0 points;
- b. For community systems, 1 point; and
- c. For municipal systems, 3 points;

(2) Values assigned based on the size of the water system shall be:

- a. For systems serving 25-100 people, 0 points;
- b. For systems serving 101-500 people, 1 point;
- c. For systems serving 501-2500 people, 2 points;
- d. For systems serving 2501-5000 people, 3 points; and

e. For systems serving over 5000 people, 4 points;

(3) Values assigned based on the status of the water source shall be:

a. For sources that are proposed, 1 point; and

b. For sources that are active, 2 points;

(4) Values assigned based on the total percent of source water protection area that will be protected through ownership or easement, by the applicant or others, shall be:

a. For projects that result in the protection of less than 10% of the source water protection area, 0 points;

b. For projects that result in the protection of 10-20% of the source water protection area, 1 point;

c. For projects that result in the protection of 21-40% of the source water protection area, 2 points;

d. For projects that result in the protection of 41-60% of the source water protection area, 3 points; and

e. For projects that result in the protection of more than 60% of the source water protection area, 4 points;

(5) Values assigned based on the number of sources protected shall be:

a. For one source, 0 points;

b. For 2 sources, 1 point; and

c. For 3 or more sources, 2 points;

(6) Values assigned based on the acreage of land proposed for acquisition, which includes donations of interest in land and associated parcels for purchase shall be:

a. For projects containing less than 10 acres, 0 points;

b. For projects containing between 10-40 acres, 1 point;

c. For projects containing between 40-99 acres, 2 points;

- d. For projects containing between 99-250 acres, 3 points; and
- e. For projects containing over 250 acres, 4 points;

(7) Values assigned based on the presence of the following natural resource, cultural, and historical attributes on the parcels proposed for acquisition, which includes donations of interest in land, shall be:

- a. For projects containing or abutting great ponds, perennial streams or rivers, non-forested wetlands, or floodplains greater than 5 acres; ½ point;
- b. For projects containing significant habitat, including rare and threatened species, and exemplary communities; ½ point;
- c. For projects containing productive forest soils, classified in the “The Role of Soils Maps in Forestry,” by James Spielman, et al. in Spring 1984 issue of Forest Notes, Society for the Protection of New Hampshire Forests, as Group 1A, 1B, or 1C, and where there is management capability; ½ point;
- d. For projects containing farmland with “prime” or “statewide important soils” according to the Natural Resources Conservation Service classification system, and where there is management capability; ½ point;
- e. For projects with existing or potential outdoor recreation amenities, such as public trails and public boat access points; ½ point; and
- f. For projects containing historical, cultural, or archaeologically significant lands that are on the National Register of Historic Places or identified by the State Archaeologist; ½ point;

(8) For groundwater sources, values assigned based on the distance of the parcel(s) proposed for acquisition, which includes donations of interests in land to be used as match, from the existing or proposed well shall be:

- a. If any of the land is located within the sanitary radius, 0 points;
- b. If any of the land is located between the sanitary radius to within 600 feet, 2 points;
- c. If any of the land is located between 600-1000 feet, 1 point; and
- d. If any of the land is located beyond 1000 feet, 0 points;

(9) For river sources, values assigned based on the distance of the parcels proposed for acquisition, which includes donations of interests in land to be used as match, up gradient from the intake and within the watershed shall be:

- a. If any of the land is located within 0-400 feet of the intake, 2 points;
- b. If any of the land is located between 400-1000 feet from the intake, 1 point; and
- c. If any of the land is located beyond 1000 feet from the intake, 0 points;

(10) For pond, lake or impoundment sources, values assigned to properties based on the distance of the parcels proposed for acquisition, which includes donations of interests in land to be used as match, from the intake shall be:

- a. If any of the land is waterfront and within 1000 feet of the intake, 2 points;
- b. If any of the land is located between 1000-4000 feet from the intake, 1 point; and
- c. If any of the land is waterfront and is located beyond 4000 feet from the intake, 0 points.

(11) Values assigned based on the percentage of total project value, including cash and interests in land to be donated, that is to be provided as match by the applicant shall be:

- a. For a percentage of total project value of 75-85%, 1 point; and
- b. For a percentage of total project value of 85-100%, 2 points;

(12) One or more values assigned based on the water supply protection measures shall be:

- a. For sources for which a comprehensive source water protection program plan is being implemented, 1 point;
- b. For sources with source water protection area regulations in effect, 1 point;
- c. For sources with a source water protection area educational program in effect, 1 point;

- d. For sources with an established land acquisition plan, 1 point;
- e. For sources with existing source water protection area ownership beyond sanitary radius or control through easement by water suppliers or others, 1 point;
- f. For sources with a long-term plan for meeting system demand, 1 point; and
- g. For sources for which a water conservation plan is being implemented, 1 point; and

(13) Values assigned based on the average per capita income and equalized taxable valuation for the municipality where those served by the water supply to be protected reside, based on the most recent available data, shall be:

- a. For applicants with both or either of the averages above the statewide average, 0 points; and
- b. For applicants with both of the averages below the statewide average, 2 points.

(h) The department shall notify applicants in writing within 60 days of the application deadline whether their application has been selected for grant funding pending the completion of items in accordance with (i) below.

(i) Once a project has been selected for grant funding, the following activities shall be completed prior to the department awarding a grant:

- (1) An environmental site assessment, if required, which indicates that the property is not contaminated, in accordance with Env-Ws 394.12;
- (2) A property survey in accordance with Env-Ws 394.13;
- (3) An appraisal in accordance with Env-Ws 394.14;
- (4) A title examination in accordance with Env-Ws 394.15 and Env-Ws 394.16; and
- (5) Baseline documentation in accordance with Env-Ws 394.18.

Env-Ws 394.12 Environmental Site Assessment Requirements.

(a) The applicant shall conduct an environmental site assessment, if requested by the department, pursuant to (b) below, after the department notifies the applicant that the applicant's grant application has been selected and prior to the land transaction being completed.

(b) The applicant shall submit an environmental site assessment for properties to be protected, including match properties, which contain known or potential contamination sources identified in the department's geographic information system or if the site walk performed by the department or their agent in accordance with Env-Ws 394.11 (b) identifies known or potential sources of contamination.

(c) An environmental site assessment shall be performed by an environmental consultant, with at least 5 years experience in preparing site assessments.

(d) An environmental site assessment shall include the following:

- (1) A 50 year history of land usage;
- (2) A description of the site inspection;
- (3) A review of all waste site files for sites located within 1000 feet of the property;
- (4) A description of the waste site file review conducted, including the date of the review;
- (5) A description of the findings from any waste site files reviewed at the department for the property; and
- (6) An opinion by the consultant that there are no contamination concerns for the property and any interest in land donated for the match.

(e) The applicant shall submit the environmental site assessment to the department upon completion.

Env-Ws 394.13 Survey Requirements.

(a) The applicant shall obtain a property survey, if an accurate survey does not already exist, after the applicant receives notification from the department that the applicant's grant application has been selected and prior to the land transaction being completed.

(b) The applicant shall provide the department with 2 paper copies and a mylar copy of the standard property survey for the property or conservation easement to be acquired with the grant and any interest in land that is being used as match.

(c) A New Hampshire licensed surveyor shall perform a standard property survey in accordance with the standards specified in Lan 503.03 – Lan 503.09.

(d) The turning points of the boundaries shall be monumented and the boundary lines shall be blazed or painted so that they can be located on the ground.

(e) The survey plan shall include the method and accuracy of the survey and a mylar suitable for recording at the registry of deeds.

Env-Ws 394.14 Appraisal Requirements.

(a) The applicant shall obtain an appraisal after the applicant has received notification from the department that the applicant's grant application has been selected and prior to the land transaction being completed.

(b) A land appraiser with at least 2 years experience in water supply land appraisals or less-than-fee interest appraisals of land shall perform the appraisal, as appropriate for the application.

(c) An appraisal shall be conducted for each property or interest in land proposed for acquisition or donation, and shall be based upon the terms of the proposed conservation easement deed, if any, and the survey performed in accordance with Env-Ws 394.13.

(d) The appraisal shall determine the fair market value of the property or conservation easement in accordance with the standards in Env-Ws 394.15.

(e) The appraisal shall be conducted in accordance with appraisal standards in Env-Ws 394.15.

(f) The applicant shall submit the appraisal to the department.

Env-Ws 394.15 Appraisal Standards.

(a) The appraisal shall be completed before final approval.

(b) The appraiser shall include the following as the standard and format for all appraisals:

(1) An introduction including:

- a. A title page with:
 - 1. The name and address of applicant;
 - 2. The location of the property; and
 - 3. The name of the appraiser;
- b. A table of contents;
- c. A letter of transmittal;
- d. Photograph(s) of subject property; and
- e. A statement of limiting assumptions and conditions under which the report value is made; and

(2) Factual data including:

- a. The purpose of the report including information about the estate appraised and the reason for the report;
- b. The date of field inspection of the subject property and a confirmation statement that the owner did or did not accompany the appraiser;
- c. A legal description of the subject property;
- d. Neighborhood analysis pertinent to the subject property to include, but not be limited to:
 - 1. Local economic data and trends;
 - 2. Real estate patterns and growth;
 - 3. Population; and
 - 4. Neighborhood amenities; and
- e. Property data to include, but not be limited to:
 - 1. Site description of quantity, quality and utilization of the following land-cover types:
 - a. Wetlands;

- b. Floodplains;
 - c. Soils;
 - d. Topography;
 - e. Mineral rights and deposits;
 - f. Leases;
 - g. Permits;
 - h. Access;
 - i. Utilities;
 - j. Easements;
 - k. Tidelands;
 - l. Overflow; and
 - m. Meandered, accretion, and reliction lands;
2. Description of land improvements for agricultural, forestry or other natural resource management, including, but not limited to:
- a. Buildings;
 - b. Structural land improvements such as dams, fencing, wells, ditches, dikes, reservoirs, irrigation systems and their type, and original and present utility; and
 - c. Dimensions, composition, condition, age and renovation of subject property;
3. Other components being appraised as part of the realty being acquired such as stumpage, crops, public access rights, and hunting and fishing rights;

4. The current use status and history of uses for the subject property;
5. Past 10 years of market history of the subject property such as any offers to buy or sell, the condition and purpose of recent sales and general marketability of the subject property;
6. Assessed value and annual taxes for the latest year for subject property and a statement regarding anticipated tax rates; and
7. Current zoning of the subject property and possible changes that may influence its value.

(c) The analysis identified in Env-Ws 394.15 (b)(2)d above shall include:

- (1) Highest and best use that can be legally made of the property for which there is a current market;
- (2) Description and justification of highest and best use which is used within the analysis;
- (3) A valuation which shall be:
 - a. Based on the highest and best use;
 - b. The basis for all subsequent analysis, comparisons, and conclusions; and
 - c. Considered only for those uses for which the property is clearly adapted;
- (4) Decisions regarding the following:
 - a. Selection and adjustment of market comparisons;
 - b. Propriety of improvements;
 - c. Present land use; and
 - d. Identification of functional and economic obsolescence;

(d) Approaches to valuation of the property utilized in the appraisal report shall depend on the type of property and the availability of data;

(e) If one or more approaches to value are omitted, an explanation shall be included in the report sequences to indicate why the approach was omitted;

(f) The approaches to valuation and requirements shall include:

(1). The market value approach to value, which includes:

- a. All comparable sales used confirmed by the buyer, seller, broker, or other persons having knowledge of the price, terms and conditions of the sale;
- b. A description of each comparable sale, weighted and analyzed in relation to the subject property to indicate reasoning behind the appraiser's final estimate of value;
- c. Adjustments made when comparing the sales to the subject;
- d. Photographs of sales; and
- e. A property sketch map for comparable sales.

(2). The cost approach to value, which shall include:

- a. Comparative data, arranged in sequence beginning with the estimated reproduction or replacement cost;
- b. The source of the cost data; and
- c. A description of the dollar amount of physical deterioration and functional and economic obsolescence, or the omission of same. This procedure may be omitted on improvements, both real and personal, for which only a salvage value is estimated; and

(3). The income approach to value, which includes:

- a. Adequate factual data to support each figure and factor used;
- b. Logically arranged data leading to a final estimate of value;
- c. Estimated gross income or economic rent;

- d. An allowance for vacancy and credit losses;
- e. An itemized estimate of total expenses including reserves for replacement;
- f. The capitalization of net income at the prevailing rate in the market for this type of property and location; and
- g. An explanation of the capitalization technique, method and rate used.

(g) The correlation and final estimate of value shall be the final step in the appraisal process and shall be a narrative correlation of the indications of value into a final estimate of value.

(h) The correlation and final estimate of value shall be performed in accordance with the following:

(1). When only one approach is used, the correlation shall serve as:

- a. A summary of the most pertinent data of that particular approach; and
- b. The appraiser's final conclusions of fair-market value.

(2). When correlating 2 or all 3 approach indications, the appraiser shall:

- a. Take into account the type of property in relation to the adequacy of the data processed in each approach; and
- b. Explain the strengths and weaknesses of each approach and influence the weight to be given each one;

(3). A final estimate shall be obtained by an examination of the spread between the minimum and maximum figures;

(4). The appraiser shall place the greatest emphasis on the approach, which most reliably reflects local thinking on marketability;

(5). Considerations tempering this estimate with any reliance placed on the other(s) shall be given; and

(6). A final estimate of value in a definite, unqualified statement shall be given;

(i) The signature of the appraiser shall be accompanied by a date on which the report is being submitted.

(j) A certification shall state that:

- (1). The appraiser has personally inspected the property and comparables;
- (2). The facts and data used are, to the best of the appraiser's knowledge and belief, true and correct;
- (3). The appraised value represents the appraiser's best and unbiased judgment;
- (4). The appraiser has no present or contemplated interest in the subject property; and
- (5). In the appraiser's opinion, the estimated fair-market value of the property is, in dollars, as of the valuation date.

(k) Addenda shall include, but not be limited to the following:

- (1). Photographs of subject property;
- (2). Location map of subject property;
- (3). Comparable sales data map;
- (4). Details of market data, including photos;
- (5). Plot plans;
- (6). Floor plans, if applicable;
- (7). Other pertinent exhibits; and
- (8). Qualifications of the appraiser;

(l) When performing the analysis identified in Env-Ws 394.15 (b) (2) d above the following situations shall require special consideration within the analysis of highest and best use:

- (1) Conformity with highest and best use shall discuss whether the present use of subject lands and improvements is in conformity with the highest and best use;

- (2) Partial acquisition, which, when only part of the ownership is acquired, shall have the highest and best use of both the proposed acquisition and the remainder of the property individually considered and described;
- (3) Increases or decreases in the value of any property owned by the owner or a related person, not just contiguous property, resulting from the granting of a perpetual conservation restriction; and
- (4) Conservation restrictions, where the highest and best use in the before and after condition shall be considered and described.
- (5) Project influence on use shall be disregarded, such as any decrease or increase in the utility of the property prior to the appraisal caused by the project for which the property is being acquired, other than physical deterioration;
- (6) The highest and best use shall be estimated as though a new or changing project were not there;
- (7) If temporary or interim uses are imminent or very probable, temporary or interim uses shall be recognized and discussed; and
- (8) Compatible multiple uses may occur and shall be identified and considered without pyramiding value.

Env-Ws 394.16 Title Examination Requirements.

- (a) The applicant shall obtain a title examination after the applicant has received notification from the department that their grant application has been selected and before the land transaction occurs.
- (b) The title examination shall be conducted for each property or interest in land that is protected or donated.
- (c) The title examination shall be conducted according to the “New Hampshire Title Examination Standards” of the New Hampshire Bar Association, 1997 edition,

Env-Ws 394.17 Conservation Easement and Deed Language Requirements.

- (a) The department shall review the form and content of each deed instrument to:
 - (1) Assure that the conservation purposes of RSA 486-A are upheld in perpetuity;

(2) Protect the quality and sustainable yield of ground and surface water resources associated with the property; and

(3) Safeguard the environmental values of the property which are dependent on water quality and quantity.

(b) Conservation easement deeds shall comply with RSA 477:45 and RSA 477:46.

(c) Conservation easements and fee simple deeds shall contain, at a minimum, the following restrictions:

(1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that may be allowed in the deed and approved by the department;

(2) No land surface alterations shall occur on the property such as filling, excavation, mining, and dredging except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that may be allowed in the deed and approved by the department;

(3) No wastes generated off the property shall be disposed of or discharged on the property;

(4) No hazardous substances shall be stored, applied or disposed of on the property, except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that do not threaten water supply protection and may be allowed in the deed approved by the department;

(5) No acts or uses shall occur on the property that would:

a. Degrade the water quality such that the standards set for public drinking water by the department would be threatened;

b. Cause an unsustainable quantity of water to be withdrawn; and

c. Harm state or federally recognized rare, threatened or endangered species;

(6) Permitted activities such as community drinking water supply, agriculture, forestry and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions set forth in the deed or easement and approved by the department.

(d) All other customary rights and privileges of ownership shall be retained by the owner including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions.

Env-Ws 394.18 Stewardship Requirements.

(a) The grantee shall be responsible for ongoing stewardship of each parcel of land or conservation easement acquired, including any donation of land or easement used as match.

(b) The grantee shall determine the financial and management implications of each parcel and establish that it has or can obtain funds to monitor and enforce the easement or manage the property.

(c) The grantee shall enforce the terms of any conservation easements acquired and assume the management of any land acquired to safeguard the drinking water source.

(d) The grantee shall:

(1) Provide baseline documentation report which describes, in writing and with photographs, the condition of the property(s) at the time of acquisition including water quality and quantity data which shall be submitted, prior to execution of the land transaction;

(2) Provide an annual property inspection that confirms that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation easement and for the purpose of RSA 486-A;

(3) For conservation easements, contact landowners annually to inform the landowners of their obligations under the easement;

(4) Prepare and submit an annual stewardship report to the department, prior to January 31 of each year, which shall contain the following:

a. A description of the site inspection conducted;

b. A description of any physical changes to the property;

c. A description of any landowner contact conducted;

d. A description of any conditions which violate or may violate the intent of the ownership or the conservation easement; and

- e. A description, including current status of any violations witnessed and remedial steps taken.

Env-Ws 394.19 Final Approval, Execution, and Deed Recordation.

- (a) The department shall approve a land transaction based on the following:

- (1) Confirmation that the property is not contaminated based on any environmental site assessment performed in accordance with Env-Ws 394.12;
- (2) Confirmation of the property boundaries and acreage by the property survey performed in accordance with Env-Ws 394.13;
- (3) Negotiation of a price not to exceed the fair market value determined by the appraisal performed in accordance with Env-Ws 394.14;
- (4) Confirmation of clear and marketable title for the property(s) as determined by the title examination conducted in accordance with Env-Ws 394.15;
- (5) Determination that the deed language requires that the land or interest in land remains in the public trust, prohibits land uses detrimental to water supply protection, and allows for public access all in accordance with RSA 486-A:7,II (c) and (d); and Env-Ws 394.17;
- (6) Receipt by the department of the baseline documentation prepared in accordance with Env-Ws 394.18; and
- (7) Confirmation that the match requirements have been met.

- (b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after governor and council approval.

Env-Ws 394.20 Procedure for Release of Lands Acquired Which Protect a Non-viable Source.

- (a) The grantee of the land or conservation easement under this program may submit a written request to the department to release lands acquired with water supply land protection grant funds if the grantee believes that the water supply source is no longer viable and providing the release does not violate other contracts or easement restrictions associated with the property.

- (b) The request shall explain why the grantee believes that the source is not and will not be viable due to the inability to remediate contamination or provide treatment which improves water quality so that it is suitable for human consumption.

(c) The department shall review the request to determine whether to release the acquired land using all available hydrogeologic and treatment technology information.

(d) Lands shall be released if water quality standards as specified in Env-Ws 310 – Env-Ws 319 cannot be achieved through remediation or treatment.

(e) The department shall inform the grantee of the decision in writing within 90 days of receiving the request.

(f) The department shall provide the grantee with a payment schedule within 90 days of approving a release of lands.

Env-Ws 394.21 Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation.

(b) Applicants may request a waiver of specific rules outlined in this part in accordance with paragraph (c) below.

(c) All requests for waivers shall:

(1) Be submitted in writing to the department; and

(2) Include the following information:

a. A description of the grant request to which the waiver request relates;

b. A specific reference to the section of the rule for which a waiver is being sought;

c. A full explanation of why a waiver is necessary and demonstration of hardship caused if the rule is adhered to;

d. A full explanation of the alternatives for which a waiver is sought with backup data for support; and

e. A full explanation of how the alternatives for which a waiver is sought are consistent with the intent of RSA 486-A and would have a just result.

(d) The department shall approve a request for a waiver if it finds that the alternatives proposed are at least equivalent to the requirements contained in this part, and are adequate to ensure that the provisions of RSA 486-A are met.

(e) The department shall not grant any waiver which in its judgment contravenes the intent of any rule.

(f) The department shall issue a written response to a request for a waiver within 30 days of a complete request. If the waiver is denied, the denial shall specifically set forth the reason(s) for the denial.